

Blog Post

Love is in the Air – And in the Workplace!

February 14, 2022

If you thought workplace romances vanished with the COVID-19 pandemic, think again. According to a recent [survey](#) by the Society for Human Resource Management (SHRM), one-third of 550 U.S. workers said they are or have been romantically involved with a colleague in 2022. That represents an increase over 2020, when 27% of workers acknowledged a workplace romance.

Interoffice romances can create many issues for employers. The ardent pursuit of romance has been the downfall of several public figures over the years, from a Republican attorney general who reportedly sent a junior state employee more than 500 text messages to her personal phone, invited her to his house at least 18 times, and often used suggestive emojis, to a former U.S. attorney who reportedly engaged in a yearlong intimate relationship with an assistant prosecutor on her staff, sent him multiple unwanted text messages when the relationship ended, and lied to investigators.

Even when the relationship is consensual, it can lead to claims of favoritism and conflicts of interest while ongoing, and, if the relationship ends or wasn't mutual in the first place, charges of harassment and discrimination.

Such relationships are especially problematic where one party is subordinate to the other. Indeed, last month alone two such relationships made headlines. A former U.S. Attorney resigned following a

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Department of Justice investigation finding that the prosecutor engaged in an intimate relationship with a subordinate, and a state university president was terminated after its Board of Regents received an anonymous complaint that the president had been involved in an inappropriate sexual affair with a subordinate.

In both cases, the romantic relationships appeared to be consensual and the complaints exposing these romances came from third parties. This fact should remind employers that interoffice romances impact not only the two people involved, but also the employees who observe these relationships in the workplace. Wise employers will take steps to ensure that workplace romances are effectively managed to minimize potential legal liability.

1. Consider Implementing a Realistic and Feasible Workplace Romance Policy.

Employers take different approaches to addressing workplace romances, depending on the size and nature of their business. Some employers outright prohibit employees from dating co-workers, supervisors, managers, and customers, while others opt for a more flexible policy. For instance, some employers permit co-workers to date, but prohibit any romantic relationships between supervisors and subordinates since those relationships can lead to an unhealthy power dynamic, even if the relationship is consensual. Other employers may decide on a policy that simply requires an employee to disclose to Human Resources a romantic relationship with another employee. That way, the employer can manage any potential issues that may arise from the existence of that romantic relationship. Some employers have no policy at all.

It is important to remember that even a strict prohibition will not prevent workplace romances from happening. However, having a clear policy may deter employees from pursuing such relationships,

and even if it doesn't, the policy may help protect the employer if the relationship goes south.

2. Educate Employees on the Policy.

Employers should communicate to all employees their policies addressing romantic or personal relationships. This can usually be done during the onboarding process, through regular training and/or through the Employee Handbook. Employers should consider presenting such policies alongside their anti-harassment policies to clearly delineate the boundaries of appropriate and inappropriate workplace behavior. The goal of communicating these policies should be to make employees feel safe about coming forward with any concerns, without fear of retaliation. Also, because we are still in a pandemic, employers should make sure employees are aware that workplace romance policies apply regardless of whether the employees are physically in an office.

3. Provide Safe Ways to Report Policy Violations or Concerns.

Employers should have a procedure for reporting policy violations or concerns that make employees feel safe from retaliation. In both the university president's situation and the prosecutor's situation, the romantic relationships were exposed after anonymous complaints were made to the employers. For this reason, many employers list employee hotlines in their handbooks or postings so that employees can raise concerns anonymously.

Employers should avoid designating supervisors or managers as those to whom such concerns should be reported, unless the supervisors and managers have been properly trained in recognizing and responding to complaints which could result in liability. The better practice is to designate a member of the Human Resources Department or company leadership team who has been trained on such matters.

4. Address Any Issues Created by Workplace Romance.

Once a romantic relationship is disclosed or revealed by another employee, the employer should address the issue by talking with the employees involved, separately. Such a conversation should include reviewing with them the company policy on employee work relationships, and making sure they understand the consequences of violating the policy. Employers should document such conversations.

If romance blossoms between a subordinate and a supervisor, the employer may need to relocate or reassign one party so they no longer work together. If transfer is not feasible or would create other issues, then the employer might consider having them enter into consensual relationship agreements. The subordinate employee's agreement should include a series of acknowledgements, including an affirmation of the voluntary nature of the relationship, the absence of coercion or promises of favors, familiarity with the company's anti-harassment policy, and a commitment that it will not interfere with the employee's work performance or disrupt the workplace. The subordinate employee also should agree to notify Human Resources if, at any point, the relationship is no longer consensual. The supervisor's agreement should include additional acknowledgements including an affirmation that the supervisor cannot make the subordinate's continued participation in the relationship a term or condition of employment, and if the relationship ends, a commitment that the supervisor will not retaliate.

Depending on the circumstances, an employer may need to give the option for one of the employees in the relationship to resign.

In any event, employers should be prepared to take action to avoid creating the appearance of favoritism or of enhanced workplace privileges for an employee in a romantic relationship with a

supervisor, as that perception substantially increases the chances that other employees will complain of inappropriate behavior.

Because of the potential legal risks that are inherent in romantic relationships in the workplace, employers should consult with experienced employment counsel before making any adverse employment decisions based on the disclosure or discovery of a romantic relationship. If you need guidance on romance in the workplace or other workplace issues, contact your Akerman attorney.

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